IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.845 OF 1997

Mhanshyam G. Khanchandani .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Petitioner in person

Mr.M.P.Dalvi with Raja Thakare for respondent No.3

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th October 2006.

P.C.

. By this petition under Article 227 of the Constitution of India, the petitioner original

accused challenges the order issuing the process passed by the learned Metropolitan Magistrate, 26th Court, Borivali (earlier 43rd Court).

2. Process is issued upon a complaint preferred by 3rd respondent original complainant alleging offences punishable under section 138 of N.I. Act.

3. Since the petitioner accused was appearing in person I gave him enough opportunity to make submissions with regard to the legality and correctness of the order issuing process. However, during the course of his arguments, the party in person sought to urge that the original complainant has suppressed very material facts. The process was issued by the trial court on account of mis-representation of facts. In that light, he invited my attention to para 4 of the complaint and contended that no machinery was delivered as stated therein. He contends that

there is no hire-purchase agreement on record. Thereafter, he invited my attention to the verification statement on record and contended that the person whose statement was recorded had no authority in law to represent the respondent No.3 - complainant. Since party was appearing in person, I called upon respondent No.3 through his Counsel to take me through the complaint and related papers. After perusing the same I am of the opinion that when this petition was admitted, several isues pertaining to the liability of the accused had not been decided by either this Court or the Supreme Court. Now, there are several decisions holding the field and it is not as if that the issue of liability to pay the amount under the cheques which have been dishonoured must be necessarily decided at the time of issuance of process. Basic ingredients of Section 138 of N.I. Act, if satisfied, then, whether the cheque was issued in discharge of any liability or whether there is any debt are

matters which are to be gone into and decided at the stage of trial. The contentions raised by party in person revolve around liability to pay the sum under the cheques which have been allegedly dishonoured.

4. In my view, nothing prevents him from placing such materials as are permissible in law at the stage of trial and raise all pleas with regard to the liability or enforceability of the debt. Needless to state that merely because process is issued summoning him to answer the charge does not mean that he is precluded from raising such pleas and placing necessary material on record.

5. Having perused the petition and the annexures thereto so also written arguments, I am of the view that the order issuing process in this case cannot be faulted, based as it is on a reading of complaint as a whole. Once the

complaint, if read as a whole, discloses commission of offence under section 138 of N.I. Act, then any further and detailed enquiry on merits is not necessary. Granting liberty to raise pleas as are raised in the petition in the manner indicated above, present petition is dismissed.

6. Rule is therefore discharged. Interim orders stand vacated forthwith. It is brought to my notice by the original complainant's Counsel that there are as many as 16 complaints filed against the party in person - accused in the same Court. Out of 16 complaints, hearing of 15 complaints which have been instituted as far back as in 1995, has been stayed.

7. Considering that the complaint is pending for more than 10 years, it would be appropriate if an endeavour is made by the Magistrate to whom the same are assigned to dispose them of, as

expeditiously, as possible and in any event within a period of one year from the date of receipt of this order.

(S.C.Dharmadhikari, J)